

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1686 OF 2003
IN
SUIT NO.1327 OF 2001

The Board of Trustees of the
Jawaharlal Nehru Port Trust ..Plaintiffs

Vs.

Patheja Forging and Auto Parts
Manufacturers Ltd. and Anr. ..Defendants

Ms.Dipti Chand i/b Advani and Co. for the
plaintiffs

Mr.Rahul Narichania i/b Bhatt and Saldanha for the
defendants

CORAM : S.U.KAMDAR, J
DATED : 7TH OCTOBER, 2005

P.C.:

1. The present motion is taken out under Order VII Rule 11 of the CPC for rejection of the plaint. It has been contended that on averments in the plaint, it is clear that defendant no.2 who is the shipping agent has already given the delivery order and in that view of the matter they are not liable to the claim of the plaintiffs towards the demurrage charges. In support thereof defendants

have relied upon Judgment of this court in Suit No.1533 of 1985 dt.4.8.05 in the case of The Board of Trustees of the Port of Bombay Vs. Laldee P.Ltd and Ors. and it has been contended that this court has already held that once the delivery order is issued by shipping agent liability of shipping agent ceases to exist. Provision of Order 7 Rule 11 of the CPC reads as under:

"Rejection of plaint- The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff"

2. Under the provision of Order 7 Rule 11 of the CPC the suit can be rejected only on the ground that if it does not disclose a cause of action or if the relief claimed is not properly valued or under valued or that the sit is vexatious, frivolous or abuse of process of court. In my view it cannot be stated in the present suit that the suit is frivolous or it does not disclose a cause of action. Plaintiff may not ultimately succeed in the suit but that has to be determined only on trial of the suit. Provision of Order 7 Rule 11 of the CPC has to be applied with extreme care and caution because no claim can be rejected without

appropriate trial as provided under CPC. In my opinion this is not a case where it can be held that claim is fraudulent or there is no cause of action at the highest the plaintiff may fail in the suit in the light of the view taken by this court in the aforesaid judgment cited by the plaintiffs. In that view of the matter, motion dismissed. All issues on merits are kept open.